

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD MERCALDO,	:	1:13-cv-1139
	:	
Plaintiff,	:	
	:	Hon. John E. Jones III
v.	:	
	:	Hon. Martin C. Carlson
J. WETZEL, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**ORDER**

**March 17, 2014**

**AND NOW**, upon consideration of the Report and Recommendation of United States Magistrate Chief United States Magistrate Judge Martin C. Carlson (Doc. 21), recommending that several Defendants be dismissed from this matter and that Plaintiff's ADA claim be dismissed, but that the amended complaint (Doc. 18) be served as to the remainder of the Defendants, and, after an independent review of the record, and noting that Plaintiff filed objections<sup>1</sup> (Doc. 26) to the

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<sup>1</sup> Where objections to a magistrate judge's report and recommendation are filed, the court must perform a *de novo* review of the contested portions of the report. *Supinski v. United Parcel Serv.*, Civ. A. No. 06-0793, 2009 WL 113796, at \*3 (M.D. Pa. Jan. 16, 2009) (citing *Sample v. Diecks*, 885 F.2d 1099, 1106 n. 3 (3d Cir. 1989); 28 U.S.C. § 636(b)(1)(c)). "In this regard, Local Rule of Court 72.3 requires 'written objections which . . . specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for those objections.'" *Id.* (citing *Shields v. Astrue*, Civ. A. No. 07-417, 2008 WL 4186951, at \*6 (M.D. Pa. Sept. 8, 2008)).

report on March 12, 2014, which the Court shall partially sustain to the extent reflected hereinbelow, **IT IS HEREBY ORDERED THAT:**

1. The Report and Recommendation of Magistrate Judge Carlson (Doc. 21) is **ADOPTED** in part and **REJECTED** in part:
  - a. This action is dismissed as against Defendants Lear, Long, Merrill, Harris, Schroeder and Terwilliger. The Clerk shall **TERMINATE** these individuals as parties on the docket.
  - b. The Magistrate Judge's recommendation that the Plaintiff's claims be dismissed as against Defendants Fisher, Hollibaugh, Driebelis and Diehl is **REJECTED**. We find that the Plaintiff has sufficiently pled personal involvement of these individuals to proceed on his claims against them.
  - c. Plaintiff's Americans with Disabilities Act Claim is **DISMISSED**, however, the factual allegations contained within that portion of the amended complaint shall be responded to by the Defendants, inasmuch as they may be construed to support Plaintiff's civil rights claims.

2. This matter is **REMANDED** to Magistrate Judge Carlson for all further pre-trial management, including the direction of service of the amended complaint.

s/ John E. Jones III

John E. Jones III

United States District Judge